IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 282 OF 2007
IN
WRIT PETITION NO. 7107 OF 2006

Malegaon Sahakari Sakhar Karkhana Ltd.] .. Applicant
Ori.Resp.No.3.

Versus

1. Vinaysingh Dhansingh Dhavan & 4 ors.] .. Respondents
(Ori.Petnr.1 & 2
Resp.1, 2 & 4)

Mr. A.V. Anturkar i/b Sugandh Deshmukh for the applicant.

Mr. P.S. Dani for the respondents No.1 and 2.

Mrs. S.S. Bhande, AGP, for the respondents.

CORAM: S.B. MHASE, &
R.S. MOHITE, JJ.

DATED: 03RD MAY, 2007

P.C. :

. Heard both sides.

2. This is a Civil Application for modification of the interim order passed by this Court on 6th November, 2006. The said order reads thus: "Issue notice before admission, returnable on 27th November, 2006. The learned Assistant Government Pleader accepts Notice on behalf of respondent No.1. Meanwhile, we

direct that the Karkhana, respondent No.3, will not raise loans beyond their borrowership capacity till further orders." As a result of the interim order the respondent No.3 i.e. the present applicant is ordered not to raise loans beyond the borrowing capacity of the applicant until further orders. However, there is a dispute on the point as to what is the borrowing capacity of the respondent No.3 viz. the applicant in the Civil Application. As per the contentions raised by the applicant in the Civil Application, the borrowing capacity of the applicant-Karkhana is Rs.9988.70 lakhs. As against that, the borrowing capacity of the applicant, as per the original petitioner viz. respondents No.1 and 2, is Rs.1987.93 lakhs as on 31st March, 2005. As per Rule 35 of the Maharashtra Cooperative Societies Rules, 1961, no Society other than those referred in Rule 36 and 37 with limited liability shall, without the previous sanction of the Registrar, incur liability exceeding in total ten times the total amount of its paid up share capital, accumulated reserved fund and building fund minus accumulated losses etc. The petitioner-society does not fall in the category of Rule 36 and 37 and, therefore, Rule 35 is applicable. Therefore, before raising a loan, the previous sanction of the Registrar for incurring liability is necessary. While granting such permission,

the Registrar is supposed to calculate the borrowing capacity of the society as provided under Rule 37.

3. What we find is that by an interim order the the applicant has already been permitted to raise a loan upto the borrowing capacity. Now, the only question which requires consideration is: what is the borrowing capacity. That exercise, as we have found, is required to be done under Rule 35 by the Registrar and, therefore, we find it appropriate at this stage to direct the Registrar viz. The Commissioner of Sugar to decide the borrowing capacity of the applicant-society as per Rule 35. While deciding the said borrowing capacity under Rule 35, the Commissioner of Sugar shall give a hearing to the applicant-Karkhana and so also to the respondents No.1 and 2 viz. the original petitioners and then, as per the decision given by the Commissioner of Sugar fixing the borrowing capacity and granting permission under Rule 35, the applicant may be permitted to raise a loan.

4. This entire exercise shall be completed by the Commissioner of Sugar within a period of three weeks.

5. With the above directions and observations, the Civil Application stands disposed of.

6. All parties to act on an authenticated copy of this order.

Sd/-
[R.S. MOHITE, J.]

Sd/-
[S.B. MHASE, J.]